

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	)	Case No. 16-39654
	)	(Jointly Administered)
ARGON CREDIT, LLC, <i>et al</i> ,)	
	)	Chapter 7
Debtors.)	
	)	Hon. Deborah L. Thorne
)	
	)	Hearing Date: March 23, 2023 at 9:30 a.m.
)	

NOTICE OF MOTION

TO: See attached list

PLEASE TAKE NOTICE that on March 23, 2023 at 9:30 a.m., the undersigned shall appear before the Honorable Deborah L. Thorne, or whomever may be sitting in her place and stead, **either** in courtroom 682 of the Everett McKinley Dirksen United States Courthouse, 219 S. Dearborn Street, Chicago, IL 60604, **or** electronically as described below, and will then present the *Motion for Entry of an Order: (I) Pursuant to Bankruptcy Rule 9019 Approving Settlement with Little Owl Argon, LLC, and (II) Approving Payment of Contingency Fee*. Parties-in-interest may obtain a copy of the Motion by contacting undersigned counsel.

All parties in interest, including the movant, may appear for the presentment of the motion either in person or electronically using Zoom for Government.

You may appear electronically by video or by telephone.

To appear by video, use this link: <https://www.zoomgov.com/>. Then enter the meeting ID and password.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and password.

Meeting ID and password. The meeting ID for this hearing is 160 9362 1728. The meeting ID can also be found on the judge's page on the court's web site.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without a hearing.

Dated: March 1, 2023

**KAREN R. GOODMAN, CHAPTER 7
TRUSTEE**

By: /s/ Elizabeth L. Janczak
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)	(Jointly Administered)
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CERTIFICATE OF SERVICE

I, Elizabeth L. Janczak, an attorney, hereby certify that on March 1, 2023, I caused a true and correct copy of the foregoing *Notice of Motion* and *Motion for Entry of an Order: (I) Pursuant to Bankruptcy Rule 9019 Approving Settlement with Little Owl Argon, LLC, and (II) Approving Payment of Contingency Fee*, to be filed with the Court and served upon the following parties by the manners listed.

/s/ Elizabeth L. Janczak

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Document Page 12 of 24

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Palatine, IL 60055-7405

Zumski, Gary

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Bank of America

PO box 982234

El Paso TX 79948-2234

DIRECTV LLC

Attn: Bankruptcies

POB 6550

Greenwood Village CO 80155-6550

Jefferson Capital System

16 Mclelland Rd

Saint Cloud MN 56303

Macy's Card

PO Box 8113

Mason OH 45040

(d)Macy's Department Stores

PO Box 8218

Mason OH 45040

Portfolio Recovery

120 Corporate Blvd

Ste 100

Norfolk VA 23502

(d)Portfolio Recovery Associates LLC

POB 41067

Norfolk VA 23541-1067

TransUnion

555 West Adams Street

Chicago, IL 60661

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Ad Hoc Committee of Unsecured Creditors

(u)Brittney Gale Alaimo

(u)Christina Alston

(d)American Express National Bank

c/o Becket and Lee LLP

PO Box 3001

Malvern PA 19355-0701

(u)Michael P. Bailey

(u)Anitra Aytman Billops

(u)John K. Brigoli

(u)Stephen Craig Brown

(u)Alejandro Camacho

(u)Joseph Canfora

(u)Matthew Cantor

Page 13 of 24

(u)Dennis C. Cantrell

(u)Tiffany N. Comfort

(u)Patti M. Couture

(u)Dale & Gensburg, P.C.

(u)Shelly A. DeRousse

(u)Donald Dotson

(u)Dennis B. Estrada-Jimenez

(u)FactorLaw

(u)Pete Ferro

(u)Lindsay Fore

(u)John Fontaine

(u)Fund Recovery Services, LLC

(u)Gensburg Calandriello & Kanter, P.C.

(u)Rosemary Gonzalez-Lopez

(d)Karen R Goodman ESQ
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Suite 3950
Chicago, IL 60603-4127

(u)Sonja Hallmon

(u)Karensa Hutchens

(u)April D. Johnson

(u)Joseph Martinez
3746 Morning Glory Ave.
AK 99534-8000

(u)Kim L. King

(u)Latonya D. Kitchen

(u)Kutchins, Robbins & Diamond, Ltd.

(u)Little Owl Argon, LLC

(u)Theresa Madrigal

(u)Margon LLC

(u)Margon LLC, Mark Triffler, Pete Ferro and

(u)Mark Triffler Declaration of Trust

(u)Yolanda J. McKinney

(u)Jerardo Prado

(u)Steven Prescott

(u)Joseph N. Roberson

(u)Delilah Jasso Rodriguez

(u)Eric Shorter

(u)Dean Sipe

(u)Jennifer J. Solorio

(u)Felicia M. Spiller

(u)Sugar Felsenthal Grais & Hammer, LLP

(u)Sharon S. Tatumausbie

(u)The Cardinal Trust

(u)Mark Triffler

(u)Karen Vinson

(u)Lois West

(u)Samantha Rae Wilder

End of Label Matrix

Mailable recipients 215

Bypassed recipients 57

Total 272

Label Matrix for local noticing
0752-1
Case 16-39655
Northern District of Illinois
Eastern Division
Wed Mar 1 12:40:37 CST 2023

Argon Credit, LLC
200 W Jackson St Suite 900
Chicago, IL 60606-6986

Argon X LLC
200 W. Jackson Blvd.
Suite 900
Chicago, IL 60606-6986

Cardinal Trust
760 Village Center Dr. Suite 200
Burr Ridge, IL 60527-4507

William J Factor
William J. Factor
105 W. Madison St.
Suite 1500
Chicago, IL 60602-4602

Fintech Financial, LLC
Attn: Mandi Vavra
101 Research Park Drive
Mission, SD 57555

(p)ARGON CREDIT
100 CANAL POINTE BLVD
SUITE 208
PRINCETON NJ 08540-7169

Fund Recovery Services, LLC
Sills Cummis & Gross, PC
Attn: V. Hamilton
600 College Road East
Princeton, NJ 08540-6636

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Burr Ridge, IL 60527-4507

Mark Trifflet Trust
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Lemont, IL 60439-7746

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Lars A Peterson
Illinois Attorney General's Office
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Office 13-219
Chicago, IL 60601-3218

Princeton Alternative Fund
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Princeton, NJ 08540-7169

Princeton Alternative Fund (PAF)
100 Canal Pointe Blvd. Suite 208
Princeton, NJ 08540-7169

Princeton Alternative Income Fund, LP
c/o Sills Cummis & Gross, PC
Attn: V. Hamilton
600 College Road East
Princeton, NJ 08540-6636

Raviv Wolfe
571 Vernon Wood Dr
Valparaiso, IN 46385-9106

Peter J Roberts
Cozen O'Connor
123 North Wacker Drive
Suite 1800
Chicago, IL 60606-1770

Michael J. Small
Foley & Lardner LLP
321 North Clark Street
Suite 2800
Chicago, IL 60654-5313

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Fund Recovery Services, LLC	(u)Little Owl Argon, LLC	End of Label Matrix	
		Mailable recipients	25
		Bypassed recipients	2
		Total	27

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	)	Case No. 16-39654
	)	(Jointly Administered)
ARGON CREDIT, LLC, <i>et al</i> ,)	
	)	Chapter 7
Debtors.)	
	)	Hon. Deborah L. Thorne
)	
	)	Hearing Date: March 23, 2023 at 9:30 a.m.
)	

**MOTION FOR ENTRY OF AN ORDER: (I) PURSUANT TO
BANKRUPTCY RULE 9019 APPROVING SETTLEMENT WITH LITTLE
OWL ARGON, LLC, AND (II) APPROVING PAYMENT OF CONTINGENCY FEE**

Karen R. Goodman (the “*Trustee*”), the chapter 7 Trustee in the above captioned cases, by and through her undersigned counsel, hereby moves (the “*Motion*”) this Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) for entry of an order approving settlement between the Trustee and Little Owl Argon, LLC (“*Little Owl*”) and approving payment of the contingency fee owed to Freeborn & Peters LLP (“*Freeborn*”). In support of the Motion, the Trustee states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(a) and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1408.
3. The predicate for the relief requested in this Motion is Bankruptcy Rule 9019.

BACKGROUND

I. General Case Background

4. On December 16, 2016 (the “*Petition Date*”), Argon Credit, LLC (“*Argon Credit*”) and Argon X, LLC (“*Argon X*,” together with Argon Credit, the “*Debtors*”) filed voluntary petitions for relief under chapter 11 of title 11 of the United State Code (the “*Bankruptcy Code*”).

5. On January 11, 2017, the Debtors’ bankruptcy cases were converted from cases under chapter 11 to cases under chapter 7.

6. Deborah K. Ebner was appointed the interim chapter 7 trustee of the Debtors’ estates, but resigned on April 17, 2017.

7. Eugene Crane was appointed as interim chapter 7 trustee on April 17, 2017 and confirmed by the Court on July 6, 2017.

8. On July 11, 2017, the Court entered an order authorizing Mr. Crane to employ Freeborn as special counsel to, among other things, pursue chapter 5 causes of action on a contingency fee basis. (ECF No. 207). Pursuant to the court-approved terms of Freeborn’s engagement, Freeborn is entitled to a contingency fee of: (i) 30% of the cash value of the settlement prior to filing a lawsuit (the “*Pre-Suit Contingency Fee*”) or 40% of the cash value of the settlement after filing a lawsuit (the “*Post-Suit Contingency Fee*,” together with the Pre-Suite Contingency Fee, the “*Settlement Amount Contingency Fee*”), (ii) plus the cash equivalent value of any claim waiver obtained (the “*Claim Waiver Contingency Fee*”).

9. On June 1, 2020, the Trustee was appointed as the successor chapter 7 trustee after Mr. Crane's resignation.

10. On July 30, 2020, the Court entered an order authorizing the Trustee to retain Freeborn on the same terms as previously approved with respect to Mr. Crane. (ECF No. 505).

II. The Little Owl Settlement

11. On December 14, 2018, Mr. Crane, the then-chapter 7 trustee, filed a complaint (the "*Complaint*") against Little Owl in this Court under Case No. 18-00947 asserting claims for, among other things, recharacterization of debt to equity under state and federal law and avoidance and recovery of \$847,595.63 in alleged fraudulent transfers made by Argon Credit under chapter 5 of the Bankruptcy Code and, in the alternative, avoidance and recovery of \$447,759.56 in alleged preferential transfers under chapter 5 of the Bankruptcy Code.¹

12. Since the filing of the Complaint, the Trustee (and her predecessor, Mr. Crane) and Little Owl engaged in lengthy settlement discussions and negotiations, including Little Owl's production of documents to the Trustee and numerous phone calls and e-mails between the parties' attorneys.

13. Settlement discussions were stymied for a time as a result of a lawsuit filed by the Debtors' secured lender, Fund Recovery Services, LLC, against Little Owl and others in the U.S. District Court for the Northern District of Illinois. While the District Court dismissed that lawsuit in late 2022, FRS refiled a similar lawsuit in Cook County, Illinois in November 2022 which is pending.

¹ The Complaint also asserted similar claims against Margon LLC, Mark Triffler as trustee of Mark Triffler Declaration of Trust dated December 5, 1991, and Barry Edmonson as trustee of The Cardinal Trust. Those claims have since been settled and those defendants dismissed.

14. After consideration of the information provided by Little Owl and lengthy discussions between the parties, the Trustee and Little Owl reached a resolution and entered into a settlement agreement (the “*Settlement Agreement*”) fully resolving the claims asserted in the Complaint and Little Owl’s counterclaims asserted against the Debtors’ estates. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit 1.²

15. The relevant terms of the Settlement Agreement are as follows:³

- Little Owl shall pay the Trustee the sum of \$195,000.00 (the “*Settlement Sum*”) in full satisfaction of the Adversary Claims⁴ and in exchange for the Trustee’s release and agreement to cooperate in production of documents and information.
- Little Owl shall release the Trustee, the Trustee’s trustee predecessors, the Debtors and their estates, and their respective professionals from all claims arising on or before the date of the Settlement Agreement, including the Counterclaims, Claim No. 15, and any claim arising under section 502(h) of the Bankruptcy Code; notwithstanding this release, Little Owl shall retain and shall not waive Claim No. 11 against Argon Credit which shall be allowed as a non-priority unsecured claim. Claim No. 15 shall be deemed withdrawn by Little Owl as reflected in an order granting this Motion.
- The Trustee, on behalf of the Debtors’ estates, shall release Little Owl from all claims arising on or before the date of the Settlement Agreement, including the Adversary Claims.
- The Trustee will reasonably cooperate with Little Owl’s reasonable requests for documents and information in connection with its defense of FRS’ state court lawsuit, at Little Owl’s expense.
- After payment of the Settlement Sum, the Trustee and Little Owl shall file a stipulation dismissing the Adversary Claims and Counterclaims with prejudice.

² Exhibit A to the Settlement Agreement is excluded as it includes the account information of the estate’s bank account.

³ The discussion of the settlement with Little Owl set forth in this Motion is merely a summary of terms. All parties-in-interest should read the entire Settlement Agreement to understand the entire scope of the parties’ agreements. In the event of any discrepancy, the terms of the Settlement Agreement shall govern.

⁴ Capitalized terms not defined in this Motion shall have the meaning ascribed to them in the Settlement Agreement.

RELIEF REQUESTED

16. By this Motion, the Trustee seeks entry of an order approving the Settlement Agreement pursuant to Bankruptcy Rule 9019(a) and entry of an order approving the Settlement Amount Contingency Fee owed to Freeborn.

A. Approval of the Settlement Agreement

17. Pursuant to Bankruptcy Rule 9019(a), “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Such settlements should be approved by a court if they are fair and reasonable and in the best interests of the debtor’s estate. *See Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586 (7th Cir. 1994) (“In conducting a hearing under Rule 9019(a), the bankruptcy court is to determine whether the proposed compromise is fair and equitable and in the best interests of the bankruptcy estate.”) (internal citations omitted); *In re Andreuccetti*, 975 F.2d 413, 421 (7th Cir. 1992) (holding that Bankruptcy Rule 9019(a) authorizes the court to approve a settlement if “the settlement is in the best interests of the estate”); *In re Energy Coop., Inc.*, 886 F.2d 921, 926-27 (7th Cir. 1989) (providing that “[t]he benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate”); *In re Griffen Trading Co.*, 270 B.R. 883, 903 (Bankr. N.D. Ill. 2001), *aff’d*, 270 B.R. 905 (N.D. Ill. 2001) (citing *LaSalle Nat’l Bank v. Holland (In re Am. Reserve Corp.)*, 841 F.2d 159, 161 (7th Cir. 1987)).

18. Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. *See Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000) (“Judges naturally prefer to settle complex litigation than to see it litigated to the hilt, especially when it is litigation in a bankruptcy proceeding – the expenses of administering the bankruptcy often consume most or even all of the bankrupt’s assets.”); *Meyers v. Martin (In re*

Martin), 91 F.3d 389, 393 (3d Cir. 1996) (“To minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy.”); *In re A&C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986).

19. The Court should grant a trustee’s request for approval of a settlement except in the very limited circumstance where a proposed settlement “falls below the lowest point in the range of reasonableness.” *Energy Coop.*, 886 F.2d at 929; *Official Comm. of Unsecured Creditors of Artra Group, Inc. v. Artra Group, Inc. (In re Artra Group, Inc.)*, 300 B.R. 699, 702 (Bankr. N.D. Ill. 2003) (same); *In re Rimsat, Ltd.*, 224 B.R. 685, 688 (Bankr. N.D. Ind. 1997) (providing that the court is required only “to canvas the issues in order to determine whether the settlement falls below the lowest point in the range of reasonableness”); *In re Telesphere Commc’ns, Inc.*, 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994).

20. In determining whether a proposed settlement is appropriate, neither an evidentiary hearing nor a rigid mathematical analysis is required. *Depoister*, 36 F.3d at 586, 588 (evidentiary hearing not required); *In re Energy Coop.*, 886 F.2d at 928-29 (rigid mathematical analysis of settlement values not required); *In re Am. Reserve Corp.*, 841 F.2d at 163 (mini-trial not required). Rather, the Seventh Circuit offers the following guidelines:

Central to the bankruptcy judge’s determination is a comparison of the settlement’s terms with the litigation’s probable costs and probable benefits. Among the factors the bankruptcy judge should consider in [the] analysis are the litigation’s probability of success, the litigation’s complexity, and the litigation’s attendant expense, inconvenience, and delay.

Am. Reserve Corp., 841 F.2d at 161 (citations omitted).

21. The Settlement Agreement satisfies this standard. Little Owl has agreed to pay \$195,000, which is more than 10% of Trustee’s total demand on her principal claim (recharacterization and fraudulent transfers of \$847,595.63) and more than 40% of the Trustee’s total demand her on alternatively-pled claim (preferences of \$447,759.56). Additionally, Little

Owl has agreed to waive its tort claim of more than \$9 million and the Trustee has agreed that Claim No. 11 (Little Owl's loan claim) shall be allowed. The Trustee submits that this settlement is well within the reasonable range of possible litigation outcomes taking into account the defenses Little Owl has raised, the information it has provided in support of those defenses, and the value of Little Owl's consideration. Additionally, it avoids the costs of litigation which may be substantial and could significantly reduce or eliminate any recovery, particularly given the amount at issue.

22. This settlement allows the Trustee to avoid the uncertainty associated with litigation while maximizing the value of the Debtors' estates for the benefit of their creditors. Accordingly, the Trustee submits that the Court should approve the Settlement Agreement pursuant to Bankruptcy Rule 9019(a).

B. Approval of the Settlement Amount Contingency Fee

23. The Trustee also requests approval to pay Freeborn the Settlement Amount Contingency Fee per the terms of Freeborn's retention of which Freeborn is entitled to a Post-Suit Contingency Fee of 40%.⁵

24. The Trustee submits that Freeborn is entitled to the Settlement Amount Contingency Fee totaling \$78,000.00 calculated as follows:

Transferee	Settlement Amount	Settlement Amount Contingency Fee Owed
Little Owl	\$195,000.00	\$78,000.00

⁵ The Trustee is not requesting payment of any Claim Waiver Contingency Fees at this time, but reserves the right to request authority to pay such fees in the future.

25. Accordingly, the Trustee requests that the Court approve, on an interim basis, payment to Freeborn of \$78,000.00 from the settlement proceeds, representing the total Settlement Amount Contingency Fee owed from the settlement.

WHEREFORE, the Trustee respectfully requests that the Court enter an order in the form and substance submitted herewith: (i) approving the Settlement Agreement with Little Owl, (ii) approving payment to Freeborn, on an interim basis, of \$78,000.00 representing the total Settlement Amount Contingency Fee, and (iii) granting such other and further relief as this Court deems just and proper.

Dated: March 1, 2023

**KAREN R. GOODMAN, CHAPTER 7
TRUSTEE**

By: /s/ Elizabeth L. Janczak
One of Her Attorneys

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